

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WASHINGTON STATE ALLIANCE FOR RETired AMERICANS,

Plaintiff,

V.

STEVE HOBBS, in his official capacity as Washington State Secretary of State; MARY HALL, in her official capacity as Thurston County Auditor; JULIE WISE, in her official capacity as King County Elections Director,

Defendants.

JIM WALSH and MATT BEATON,

Proposed Intervenors-Defendants.

I. INTRODUCTION

In November 2023, Plaintiff filed this lawsuit challenging the State of Washington's requirement that all residents registering to vote attest that they will have lived at their registration address for at least 30 days before the next election. Dkt. 1. Plaintiff argued that after Washington enacted same-day voter registration in 2019, the 30-day residency requirement became unlawful, and violated the federal Voting Rights Act and the First and Fourteenth

1 Amendments. *See id.*

2 On March 15, 2024, this Court granted the parties' joint motion to enter a consent
 3 judgment and decree that enjoined Defendants from enforcing the durational residency
 4 requirement. Dkt. 35, 36. Since that time, Defendant Steve Hobbs, the Washington Secretary of
 5 State, has complied with the consent decree by promptly informing all county auditors (including
 6 proposed-intervenor Matt Beaton) on March 19, 2024, of its requirements and going through a
 7 public rulemaking process to amend Washington's voter registration form that became effective
 8 on August 25, 2024. *See* Dkt. 50. The new voter registration form removes the durational
 9 residency requirement but still requires Washington voters to attest that they are residents of the
 10 State of Washington. *See* Dkt. 50-5 at 6.

11 On September 16, 2024, Franklin County Auditor Matt Beaton and Washington State
 12 Republican Party chairman Jim Walsh moved to intervene as defendants in the case. Dkt. 38.
 13 The Court set an accelerated briefing schedule and heard oral argument on the day the motion to
 14 intervene became ripe. *See* Dkt. 41, 42, 52.

15 Beaton and Walsh argue primarily that they should be allowed to intervene based on their
 16 allegations that the underlying litigation was collusive and that Defendants failed to advance
 17 potentially meritorious arguments challenging Plaintiff's Article III standing. *See* Dkt. 38, 51.
 18 The proposed intervenors have not supported their motion or allegations with any sworn
 19 declarations or other evidence. Plaintiff, and Defendant Steve Hobbs, have both opposed the
 20 motion, arguing that it is untimely and does not meet the standard for intervention under Federal
 21 Rule of Civil Procedure 24(a) and relevant Ninth Circuit precedent. Dkt. 47, 48. Defendant
 22 Hobbs supported his opposition with evidence establishing both when proposed intervenors
 23 knew or had reason to know of the consent decree and the steps the Secretary of State's office
 24 has already taken to comply with the consent decree's terms in advance of the November 2024

1 election. *See* Dkt. 50.

2 Timeliness is a “threshold requirement for intervention.” *United States v. Oregon*, 913
 3 F.2d 576, 588 (9th Cir. 1990). Because Beaton and Walsh have not met their burden to show that
 4 they timely moved to intervene, their motion is DENIED.

5 **II. BACKGROUND**

6 Before the consent decree and closure of this case (Dkt. 37), Washington law required
 7 residents registering to vote to attest that they have lived at their current in-state address “for at
 8 least thirty days immediately before the next election.” RCW 29A.08.230. Washington also
 9 allows for same-day voter registration. RCW 29A.08.140(b).

10 Plaintiffs in this case, the Washington State Alliance for Retired Americans, filed their
 11 complaint on November 7, 2023, claiming that this thirty-day residency requirement harmed its
 12 members—because retirees “frequently move to Washington for a variety of reasons, including
 13 to be close to family” and also “regularly move within the State” and are unable to vote because
 14 of the requirements of RCW 29A.08.230. *See* Dkt. 1 at 6. The Alliance asserted that this
 15 requirement “prohibits otherwise-eligible Washington voters who have recently moved from
 16 participating in elections affecting them in their new home.” *Id.* at 11.

17 The Alliance publicized its lawsuit and the case was covered by legal news publications
 18 concerned with voting issues within a day of filing. *See, e.g.*, Rachel Riley, *Washington Can’t*
 19 *Block New Residents from Voting, Retirees Say*, Law360, <https://www.law360.com/articles/1764615/wash-can-t-block-new-residents-from-voting-retirees-say> (Nov. 8, 2023); Democracy
 20 Docket, *Washington Durational Residency Requirement Challenge*, <https://www.democracydocket.com/cases/washington-durational-residency-requirement-challenge/>.

21 The Alliance amended its complaint on November 20 (Dkt. 16), and Defendants filed
 22 answers on December 8 and 12, 2023 (Dkt. 23, 24), and January 4, 2024 (Dkt. 28).

1 Subsequently, on March 6, the parties notified the Court that they had resolved their dispute.
2 Dkt. 34. On March 8, the parties moved for the Court to enter their negotiated consent judgment
3 and decree. Dkt. 35. The Court granted the motion and entered the consent judgment and decree
4 on March 15, 2024. Dkt. 36, 37.

5 The consent decree concluded that Washington state's durational residency requirement
6 under RCW 29A.08.230 violated Section 202(c) of the Voting Rights Act, and the First and
7 Fourteenth Amendments. Dkt. 37 at 5–6; *see* 52 U.S.C. § 10502(c). The consent decree also
8 provided that, so long as its effective date was no later than August 1, 2024, the Washington
9 Secretary of State's Office would "as soon as practicable" before the November 2024 elections:
10 (1) revise voter registration forms and informational materials to exclude mention of any
11 durational residency requirement, (2) "direct county officials regarding the requirements to make
12 changes to the oaths and registration forms as stated in" the consent judgment and decree,
13 (3) advise the Washington Department of Licensing to update websites and publicly-accessible
14 materials to reflect these changes, and (4) stop distributing materials indicating to voters that
15 they must reside at their Washington address for at least thirty days before elections. Dkt. 37 at
16 5–7.

17 On March 19, 2024, in compliance with the injunctive requirements of the consent
18 decree, the Washington Secretary of State's Director of Elections, Stuart Holmes, forwarded the
19 consent decree and summary of required election changes to all Washington county auditors and
20 election managers. *See* Dkt. 50 ¶ 4; Dkt. 50-1. Proposed Intervenor Matt Beaton, the Franklin
21 County Auditor, was one of the recipients of Holmes' email. Dkt. 50-1 at 2. Holmes' email
22 directed the auditors' offices "to remove any mention of the 30-day durational residency
23 requirement" from their websites and printed materials. *Id.* The email also summarized the
24 consent judgment and decree, informing recipients that "Voters cannot be denied the right to

1 register or right to vote in any election on the basis that the registrant or voter has not resided at
 2 their current address to vote for at least thirty days before election day.” *Id.*

3 On May 21, 2024, the Washington Secretary of State filed a notice of proposed
 4 rulemaking to amend the voter registration form to comply with the consent decree and the
 5 notice was published in the Washington State Register. *See* Wash. State Reg. § 24-11-136 (May
 6 21, 2024); Dkt. 50-2. The notice provided the name of this case and case number as one of the
 7 reasons for the proposal. *Id.* On May 28, this notice was circulated to a list of parties that “have
 8 requested to be notified of all Washington Administrative Code filings related to election
 9 administration.” *See* Dkt. 50 ¶ 6; Dkt. 50-3 at 2. The notice was also emailed to all county
 10 auditors in the state, including Beaton, on the same day. *See* Dkt. 48 at 5; Dkt. 50-4 at 2. On June
 11 25, a public hearing was held at the Washington State Library to address the proposed rule. *See*
 12 Dkt. 50 ¶ 7. Afterwards, on July 25, the rule was adopted as final, and it became effective on
 13 August 25. Wash. State. Reg. § 24-16-019; Dkt. 50 ¶ 8; Dkt. 50-5 at 2.

14 Throughout July, multiple Washington news publications reported on the consent decree
 15 and changes to voting requirements. *See, e.g.*, TJ Martinell, *Ferguson, Hobbs agree to settlement*
 16 *voiding original Washington Constitution voter rule*, The Center Square, <https://queenannenews.com/news/2024/jul/10/ferguson-hobbs-agree-to-settlement-voiding-original-washington-constitution-voter-rule/> (Jul. 10, 2024); Eric Tegethoff, *30-day residency requirement of WA voter registration struck down*, MyEdmondsNews, <https://myedmondsnews.com/2024/07/30-day-residency-requirement-for-wa-voter-registration-struck-down/> (Jul. 16, 2024).

21 Beaton and Walsh filed their motion to intervene on September 16. Dkt. 38. At proposed
 22 intervenors’ request, the Court set an accelerated briefing schedule and heard oral argument on
 23 the day the motion became ripe. *See* Dkt. 41, 43, 52. Plaintiff Washington State Alliance for
 24 Retired Americans and Defendant Steve Hobbs opposed the intervention, Dkt. 47–48, and the

1 proposed intervenors replied. Dkt. 51.

2 **III. LEGAL STANDARD**

3 Federal Rule of Civil Procedure 24(a) provides for intervention as a matter of right if, on
 4 a “timely motion,” the party moving to intervene “claims an interest relating to the property or
 5 transaction that is the subject of the action, and is so situated that disposing of the action may as
 6 a practical matter impair or impede the movant’s ability to protect its interest.” The Ninth Circuit
 7 articulates four requirements for intervention as of right: (1) timeliness, (2) an interest relating to
 8 the subject of the case, (3) that disposition of the case may impair the movant-intervenor’s ability
 9 to protect that interest, and (4) the movant’s interest is not adequately represented by the existing
 10 parties. *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996), *as amended on*
 11 *denial of reh’g* (May 30, 1996). The party seeking to intervene bears the burden of showing that
 12 all requirements are satisfied. *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir.
 13 2004). And of the four requirements, timeliness “is the threshold requirement for intervention as
 14 of right.” *League of Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997) (citing
 15 *United States v. Oregon*, 913 F.2d at 588 (cleaned up)). If a motion to intervene is not timely, the
 16 Court “need not reach any of the remaining elements.” *Id.* (citing *United States v. Washington*,
 17 86 F.3d 1499, 1503 (9th Cir. 1996)).

18 **IV. DISCUSSION**

19 “A party must intervene when he knows or has reason to know that his interests might be
 20 adversely affected by the outcome of the litigation.” *W. Watersheds Project v. Haaland*, 22 F.4th
 21 828, 835–36 (9th Cir. 2022) (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 923 (9th
 22 Cir. 2004)). In deciding whether a motion to intervene is timely, the Court considers three
 23 factors: (1) the stage of the proceedings at which a movant seeks to intervene, (2) the prejudice to
 24 the parties, and (3) the reason for and length of the delay. *Id.* (citing *Orange Cnty. v. Air Cal.*,

1 799 F.2d 535, 537 (9th Cir. 1986)). Intervention at a late stage in proceedings, such as where
 2 parties have already “come to an agreement” even where the resolution is not yet “officially
 3 approved by the district court” “weighs heavily against” intervention. *Cal. Dep’t of Toxic*
 4 *Substances Control v. Com. Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th Cir. 2002) (citing
 5 *Orange Cnty.*, 799 F.2d at 538). Moreover, late-stage intervention has been determined to be
 6 prejudicial as it “unnecessarily prolong[s] the litigation” and “threaten[s] the parties’ settlement.”
 7 *Id.* Post-judgment intervention specifically is “disfavored because it creates ‘delay and prejudice
 8 to existing parties.’” *Calvert v. Huckins*, 109 F.3d 636, 638 (9th Cir. 1997) (quoting *United*
 9 *States v. Yonkers Bd. Of Educ.*, 801 F.2d 593, 596 (2d Cir. 1986)); *see also Alaniz v. Tillie Lewis*
 10 *Foods*, 572 F.2d 657, 659 (9th Cir. 1978) (“Since the motion was filed after the consent decree
 11 was approved, the first factor weighs heavily against appellants . . . to countermand it now would
 12 create havoc and postpone the needed relief.”) (internal citation omitted).

13 Waiting “until after entry of a consent decree weighs heavily against intervention.”
 14 *Oregon*, 913 F.2d at 588. And movants must “convincingly explain” their reason for delay—the
 15 Ninth Circuit denied intervention in *Orange County* where the proposed intervenors claimed they
 16 “did not know” their “interests were not being adequately represented by the original parties”
 17 even though “local newspapers reported the ongoing negotiations between the parties.” *See*
 18 *Orange Cnty.*, 799 F.2d at 538. The Ninth Circuit held that the movants in *Orange County*
 19 should have “joined the negotiations before the suit was settled” to “protect their interests,”
 20 “realized that the litigation might be resolved by negotiated settlement,” and “surely . . . known
 21 the risks of waiting.” *Id.* The Ninth Circuit held the district court did not abuse its discretion in
 22 denying the intervention as untimely. *Id.*; *see also Oregon*, 913 F.2d at 589 (finding intervention
 23 untimely when movants had notice of the proceedings and were aware of the interests affected).

24 In this case, Beaton and Walsh waited to intervene until six months after the consent

1 decree had been entered, five months after the time for appeal had passed, and after Defendant
 2 Hobbs had acted to implement the relief provided by the consent decree in advance of the
 3 November 2024 election. *See* Dkt. 37, 50. Even putting aside the publicity surrounding the
 4 lawsuit's filing in November 2023, and the public nature of the Court's docket, there is no
 5 dispute that Defendant Hobbs' office provided notice of the consent decree and its consequences
 6 to all county auditors on March 19, 2024, including Beaton and all other auditors affiliated with
 7 the state Republican party. Dkt. 50 ¶ 4, Dkt. 50-1. Counsel for the proposed intervenors
 8 conceded at oral argument that, even if his client did not read the email, this notice provided
 9 "reason to know" that his clients' interests "might be adversely affected by the outcome of the
 10 litigation." *W. Watersheds Project*, 22 F.4th at 835–36. Had proposed intervenors sought to
 11 intervene then to raise their standing arguments on appeal, their motion might have been timely.
 12 *See id.* at 836 ("The general rule is that a post-judgment motion to intervene for purposes of
 13 appeal is timely if filed within the time allowed for the filing of an appeal" (cleaned up)).

14 Instead, proposed intervenors waited for nearly six more months, while in the meantime
 15 Defendants acted to implement the consent decree. For the first factor in evaluating timeliness of
 16 an intervention, the Ninth Circuit already considers proceedings to be in their late stages when
 17 parties are coming "to an agreement" even if their resolution is not yet "officially approved by
 18 the district court." *Com. Realty Projects, Inc.*, 309 F.3d at 1119 Intervention at this stage, where
 19 the Court has entered a consent decree and Defendants have implemented its requirements, is
 20 therefore particularly late and the circumstances "weigh[] heavily against" intervention. *Alaniz*,
 21 572 F.2d at 659.

22 As to the second factor, for the Court to allow intervention now, several months after its
 23 entry of the consent decree and weeks before a general election, would lead to the exact kind of
 24 prejudice to the parties that disfavors late-stage interventions. *See, e.g.*, *Calvert*, 109 F.3d at 638

(Post-judgment intervention is “disfavored because it creates delay and prejudice to existing parties” (cleaned up)); *Alaniz*, 572 F.2d at 659 (To “countermand [the consent decree] now would create havoc and postpone the needed relief.”). The terms of the consent decree included specific timing provisions to ensure that its relief could be implemented in an orderly way well in advance of the November 2024 election. *See* Dkt. 37 at 6. Defendant Hobbs has complied with those terms—through public rule-making—and the voter registration forms and materials in use for the upcoming election reflect the consent decree’s requirements. *See* Dkt. 50-1-50-5. Allowing intervention now would prejudice Defendants by casting doubt on the procedures they have already expended significant resources implementing. And although at oral argument counsel for the proposed intervenors disclaimed any intent to try and alter those procedures for this election, allowing intervention at this late stage also creates a risk of confusion for voters seeking to register. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam) (“Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.”).

As to the third factor for timeliness, Beaton and Walsh’s motion does not “convincingly explain” the reason for or length of their delay. *Orange Cnty.*, 799 F.2d at 538. Beaton and Walsh only claim, without any supporting evidence, that neither “had any reason to know that their rights and obligations were at stake.” Dkt. 38 at 6. The Ninth Circuit has held that this is not an adequate excuse. *Orange Cnty.*, 799 F.2d at 538 (quoting *Alaniz*, 572 F.2d at 659) (holding that proposed intervenors could not simply claim they “did not know” their “interests were not being adequately represented by the original parties,” particularly where “local newspapers reported the ongoing negotiations.”). Here, as in *Orange County*, there was publicly available press coverage of the lawsuit and resulting consent decree, and the Washington Secretary of

State's office took numerous steps to inform county officials of the consent decree and its requirements—including by sending a copy of the decree and a summary of its requirements directly to Beaton within the time for taking a direct appeal. Neither Beaton nor Walsh supports their motion with any sworn testimony or other evidence to the contrary, and they have not explained why they waited nearly six months after that point to intervene.

Although it is their burden to show that they have met all requirements to intervene, Beaton and Walsh do not address any factors other than timeliness in their motion. *See generally* Dkt. 38. But timeliness is dispositive. Timeliness “is the threshold requirement for intervention as of right,” and if a motion to intervene is not timely, the Court “need not reach any of the remaining elements.” *League of Latin Am. Citizens*, 131 F.3d at 1302. Accordingly, the Court denies Beaton and Walsh’s motion and declines to examine any other issues.

V. CONCLUSION

Because the proposed intervenors Beaton and Walsh's motion is untimely, and timeliness is a threshold issue under Fed. R. Civ. P. 24(a) setting the requirements for intervention as of right, the Court DENIES the motion to intervene (Dkt. 38).

Dated this 11th day of October, 2024.



Tiffany M. Cartwright
United States District Judge